



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XR014**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Bremerton Ferry Terminal Dolphin Relocation Project in Washington State**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; incidental harassment authorization; request for comments on proposed renewal.

**SUMMARY:**

NMFS received a request from the Washington State Department of Transportation (WSDOT) for the Renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to the dolphin (a man-made structure that protects other structures from being struck by boats) relocation project at the Bremerton Ferry Terminal in Washington State. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The Renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to

allow for any additional comments on the requested Renewal not previously provided during the initial 30-day comment period.

**DATES:** Comments and information must be received no later than **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Fowler@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

*<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms

such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-year IHA Renewal when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section of the initial IHA. All of the following conditions must be met in order to issue a Renewal:

- A request for Renewal is received no later than 60 days prior to expiration of the current IHA;

- The request for Renewal must include the following:

- (1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and

- (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the initial findings remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at:

*www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals*. Any comments received on the potential Renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA Renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested Renewal, and agency responses will be summarized in the final notice of our decision.

### **National Environmental Policy Act**

Issuance of an MMPA 101(a)(5)(D) authorization requires compliance with the National Environmental Policy Act (NEPA).

NMFS preliminary determined the issuance of the proposed Renewal is consistent with categories of activities identified in CE B4 (issuance of incidental harassment authorizations under section 101(a)(5)(A) and (D) of the MMPA for which no serious injury or mortality is anticipated) of NOAA's Companion Manual for NAO 216-6A, and we have not identified any extraordinary circumstances listed in Chapter 4 of the

Companion Manual for NAO 216-6A that would preclude this categorical exclusion under NEPA.

We will review all comments submitted in response to this notice prior to making a final decision as to whether application of this CE is appropriate in this circumstance.

### **History of Request**

On August 24, 2018, NMFS issued an IHA to WSDOT to take marine mammals incidental to Bremerton and Edmonds Ferry Terminal Dolphin Relocation Project in Washington State (83 FR 45897; September 11, 2018), effective from October 1, 2018 through September 31, 2019. On May 8, 2019, NMFS received a request for the Renewal of that initial IHA. As described in the request for Renewal, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>), which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

### **Description of the Specified Activities and Anticipated Impacts**

WSDOT proposes to relocate one dolphin to improve safety at the Bremerton Ferry Terminal. The Olympic Class ferries have an atypical shape, which at some terminals causes the vessels to make contact with the inner dolphin prior to the stern of the vessel reaching the intermediate or outer dolphin. This tends to cause rotation of the vessel away from the wingwalls, which presents a safety issue. Relocating the dolphin

will reduce the risk of landing issues for Olympic Class ferries at the Bremerton ferry terminal. Due to NMFS and the U.S. Fish and Wildlife Service (USFWS) in-water work timing restrictions to protect ESA-listed salmonids, planned WSDOT in-water construction at the Bremerton ferry terminal is limited to August 1, 2019 through February 15, 2020. All work proposed by WSDOT would be conducted within this window.

The specified activities described for this Renewal are an identical subset of the activities covered by the initial IHA. NMFS previously published notices of proposed IHA (83 FR 16330; April 16, 2018) and issued IHA (83 FR 45897; September 11, 2018). These documents, as well as WSDOT's initial IHA application and the preliminary monitoring report for the previously issued IHA, are available at:

*<https://www.fisheries.noaa.gov/action/incidental-take-authorization-washington-state-department-transportation-ferry-terminal>*.

Similarly, the anticipated impacts are identical to those described in the initial IHA. Specifically, we anticipate the take of individuals of eleven marine mammal stocks (including four pinniped and seven cetacean stocks), by Level B harassment only, incidental to noise resulting from pile driving associated with the proposed activities. WSDOT was not able to complete the pile driving activities analyzed in the initial IHA by the date that IHA is set to expire and anticipates the need for additional pile driving to complete the project.

The following documents are referenced in this notice and include important supporting information, and may be found at the indicated location:

- Initial Proposed IHA: Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Bremerton and Edmonds Ferry Terminals Dolphin Relocation Project in Washington State (83 FR 16330; April 16, 2018). Available at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-washington-state-department-transportation-ferry-terminal>;
- Initial Final IHA: Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Bremerton and Edmonds Ferry Terminals Dolphin Relocation Project in Washington State (83 FR 45897; September 11, 2018). Available at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-washington-state-department-transportation-ferry-terminal>; and
- Preliminary Monitoring Report from Initial IHA. Available at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-washington-state-department-transportation-ferry-terminal>.

### *Detailed Description of the Activity*

As described above, WSDOT was not able to complete the activities analyzed in the initial IHA by the date that IHA is set to expire (September 30, 2019). As such, the activities WSDOT proposes to conduct between August 1, 2019 and February 15, 2020 would be a continuation of the activities as described in the initial 2018 IHA and would be identical to the activities analyzed in the initial IHA (*e.g.*, same location, equipment, methods, seasonality). The initial IHA analyzed the potential impacts to marine mammals from the relocation of one dolphin each at the Edmonds and Bremerton ferry terminals to accommodate the Olympic Class ferries.

WSDOT completed all planned activities at the Edmonds ferry terminal in the 2018-2019 in-water work period but no work was conducted at the Bremerton ferry terminal. The numbers of each pile size that were planned to be driven during the 2018-



2019 work window is shown in Table 1 of the initial proposed IHA (83 FR 16330; April 16, 2018). WETA planned to install and remove a total of 30 piles in the 2018-2019 work window (11 at the Edmonds ferry terminal and 19 at the Bremerton ferry terminal). However, as described above, WSDOT was only able to complete pile driving at the Edmonds ferry terminal. Four 36-inch steel pipe piles were removed with a vibratory hammer and seven steel pipe piles (three 30-inch and four 36-inch) were installed with a vibratory hammer at the Edmonds ferry terminal. Construction occurred on six days between January 29 and February 7, 2019. WSDOT therefore proposes to complete pile driving activities at the Bremerton ferry terminal in the 2019-2020 work window.

The proposed activities at the Bremerton ferry terminal include vibratory installation and removal of steel pipe piles. A total of 19 steel pipe piles will be installed and removed at the Bremerton ferry terminal. One temporary 36-inch indicator pile will be installed with a vibratory hammer. The temporary indicator pile will be used as a visual landing aid for vessel captains during construction. Once the indicator pile is in place, the 6 36-inch piles that comprise the left outer dolphin will be removed with a vibratory hammer and/or by direct pull and clamshell removal. Using a vibratory hammer, three 30-inch reaction piles will be installed as a back group of piles to provide stability to the dolphin. A concrete diaphragm atop the back piles will be installed, followed by four additional 30-inch reaction piles installed with a vibratory hammer. Three 36-inch steel pipe fender piles will be installed with a vibratory hammer. Fenders and rub panels will be installed to absorb energy from the vessel as it makes contact with the dolphin. Finally, using a vibratory hammer, the 36-inch temporary indicator pile will be removed and reinstalled as the last fender pile. Vibratory removal of both 30- and 36-

inch piles is expected to take up to 15 minutes per pile. Vibratory installation of 30- and 36-inch piles is expected to take up to 20 minutes per pile. Underwater sound resulting from pile driving could result in the harassment of marine mammals. The proposed Renewal would be effective from August 1, 2019 through July 31, 2020.

#### *Description of Marine Mammals*

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the Notices of the proposed IHA for the initial authorization (83 FR 16330; April 16, 2018). The marine mammal species for which take was authorized in the initial IHA, and for which take is proposed in this requested Renewal are: Pacific harbor seal (*Phoca vitulina richardii*), Northern elephant seal (*Mirounga angustirostris*), California sea lion (*Zalophus californianus*), eastern Distinct Population Segment (eDPS) Steller sea lion (*Eumetopias jubatus*), transient killer whales (*Orcinus orca*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), and common dolphin (*Delphinus delphis*).

NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature. The 2018 Stock Assessment Report notes that the estimated abundance of California sea lions has decreased slightly and the estimated abundances of Eastern North Pacific gray whales and California/Oregon/Washington humpback whales increased slightly. Additionally, since January 1, 2019, elevated gray whale strandings

have occurred along the west coast of North America from Mexico through Alaska. NMFS declared an Unusual Mortality Event on May 31, 2019. As of June 27, 2019, a total of 85 gray whales have stranded along the U.S. coast, with a combined additional 86 whales stranded in Mexico and Canada. Full or partial necropsy examinations have been conducted on a subset of the stranded gray whales. Preliminary findings in several of the whales have shown evidence of emaciation. However, neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the *Description of the Marine Mammals in the Area of Specified Activities* contained in the supporting documents for the initial IHA.

#### *Potential Effects on Marine Mammals and their Habitat*

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the Notices of the proposed IHA for the initial authorization (83 FR 16330; April 16, 2018). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

#### *Estimated Take*

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notice of proposed IHA (83 FR 16330; April 16, 2018) and issued IHA (83 FR 45897; September 11, 2018) for the initial authorization. The pile driving equipment that may result in take, as well as the source levels, marine mammal stocks taken, and the methods of take estimation remain unchanged from the previously

issued IHA. Changes in the density of seven stocks are indicated below, though they result in only minor changes in the take estimates that do not affect our findings, as described.

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to acoustic sources (*i.e.*, vibratory pile driving). Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.*, shutdowns) discussed in detail below in Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described above, WSDOT completed all pile driving activities at the Edmonds ferry terminal in the 2018-2019 in-water work period and proposes to install and remove a total of 19 piles at the Bremerton ferry terminal in the 2019-2020 work period to complete the project. All piles to be installed and removed at the Bremerton ferry terminal would be 30- and 36-inch steel pipe piles. The number of piles for each respective size and element are shown in Table 1.

**Table 1. Number and Sizes of Piles Proposed for Installation and Removal, and Estimated Duration of Pile Driving.**

<b>Pile element</b>	<b>Method</b>	<b>Size (inch)</b>	<b>Number of piles</b>	<b>Duration/pile (min)</b>	<b>Number of piles per day</b>	<b>Duration (Days)</b>
Indicator pile	Vibratory install	36	1	20	1	1
Indicator pile	Vibratory removal	36	1	15	1	1
Existing dolphin	Vibratory removal	36	6	15	3	2
Relocate dolphin install	Vibratory install	36	4	20	3	2

Relocated dolphin install	Vibratory install	30	7	20	3	3
<b>Total</b>			<b>19</b>	<b>345</b>		<b>9</b>

Distances to the isopleths corresponding to the Level B harassment threshold for each pile size are shown in Table 2. Distances to the isopleths corresponding to the Level A harassment thresholds for the various marine mammal functional hearing groups, by pile size and duration of pile driving, are shown in Table 3. Descriptions of the modeling methods used to determine the distances shown in Tables 2 and 3 are described in detail in the Notice of proposed IHA (83 FR 16330; April 16, 2018) for the initial IHA. These methods have not changed from the initial IHA, and all values shown in Tables 2 and 3 have not changed from the initial IHA.

**Table 2. Distances to Isopleths Corresponding to the Level B Harassment Threshold.**

<b>Pile driving activity</b>	<b>Distance to Level B harassment threshold (m)</b>
36-inch steel pile (installation and removal)	63,100
30-inch steel pile (installation)	39,800

**Table 3. Distances to Isopleths Corresponding to Level A Harassment Thresholds.**

Pile driving activity	Distance to Level A harassment threshold (m)				
	LF Cetacean	MF Cetacean	HF Cetacean	Phocid	Otariid
36-inch indicator pile install (1 pile/day)	10	10	25	10	10
36-inch indicator pile removal (1 pile/day)	10	10	10	10	10
36-inch steel pile (existing dolphin) removal (3 piles/day)	25	10	35	10	10
36-inch steel pile (relocated dolphin) install (3 piles/day)	25	10	35	10	10
30-inch steel pile (relocated dolphin) install (3 piles/day)	25	10	25	10	10

As the number of pile driving days that would occur in this year of activity is less than the number of pile driving days analyzed in the initial IHA, the number of takes estimated to occur in the 2019-2020 work season, and requested for this Renewal, has changed from the number of takes authorized in the initial IHA. Take numbers authorized in the initial IHA are shown in Table 7 in the Notice of issued IHA (83 FR 45897; September 11, 2018), available at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-washington-state-department-transportation-ferry-terminal>.

The number of takes requested for this Renewal, for each marine mammal stock, are shown in Table 4. Auditory injury (*i.e.*, Level A harassment) is unlikely to occur for any species or stock, given the small injury zones. Since the largest Level A distance is only 35 m from the source for high-frequency cetaceans (harbor porpoise and Dall's porpoise, Table 3), NMFS expects that WSDOT can effectively monitor such small zones to implement shutdown measures and avoid Level A takes. Therefore, no Level A take of marine mammal is anticipated nor proposed to be authorized for the pile driving activities at the Bremerton ferry terminal.

To inform take estimates in the initial IHA, marine mammal densities were taken from the U.S. Navy's Marine Species Density Database (MSDD; U.S. Navy 2015). Since then, the Navy has published an updated MSDD for the Phase III Northwest Training and Testing Study Area with updated densities for marine mammal species in the inland waters of Puget Sound (U.S. Navy 2019). In the 2019 MSDD, densities of harbor seals, northern elephant seals, gray whales, and humpback whales increased from those presented in the 2015 MSDD, while densities of harbor porpoises, Dall's porpoises, and transient killer whales decreased. The densities of Steller sea lion and minke whale remained the same in both iterations of the MSDD. While updated densities for marine mammals were used here, the method of calculating estimated takes remains identical to that used in the initial IHA. For all marine mammals except California sea lions, takes were calculated by multiplying the ensonified area by the average animal density in the area (U.S. Navy 2019) and the number of days of pile driving (9 days), rounded up to the nearest integer. Take of California sea lions was calculated by multiplying the average number of California sea lions sighted in daily monitoring at the U.S. Navy's Bremerton Shipyard (69 animals) by the number of days of pile driving (9 days).

Using the take calculation method described above (area x density x days) resulted in estimated zero takes of some species, despite possible presence in the project area. In these cases, take was estimated by incorporating typical group size and/or potential for occurrence during the project work period. Specifically, take of northern elephant seals was calculated by assuming one seal may be present each day for a total of nine takes by Level B harassment. Take of transient killer whales was calculated by assuming one group of six killer whales (mean group size (Shields *et al.*, 2018)) may

enter the Level B harassment zone twice over the course of the project for a total of 12 takes by Level B harassment. Takes of gray whales, humpback whales, and minke whales was estimated by assuming one of each species may be present every other day during the nine days of pile driving, for a total of five takes by Level B harassment for each species. Dall's porpoises are considered rare in Puget Sound waters (U.S. Navy 2019) but a large group of 15 Dall's porpoises may enter the Level B harassment zone once during pile driving activities. Finally, take of common dolphins was calculated by assuming one group of seven dolphins (mean group size (CRC 2017)) may enter the Level B harassment zone once over the course of the project. No takes of Southern Resident killer whales were calculated, and due to mitigation measures proposed by WSDOT (described in detail below), no takes are anticipated or requested for this Renewal.

Here, we describe in summary how the changes in density estimates affect the take estimates in this requested Renewal in relation to the take estimates in the initial IHA. For some species, the updated density estimates had no effect on estimated take. Even with increased densities, calculated takes of northern elephant seals, Southern Resident killer whales, transient killer whales, gray whales, humpback whales, minke whales, and common dolphins were zero animals taken. For these species, the proposed take was estimated as described above, and the updated densities had no effect on the number of takes. The estimated takes of two species were affected by the changes in density estimates, harbor seals and harbor porpoises.

The estimated density of harbor porpoises decreased from the 2015 MSDD (used to calculate takes in the initial IHA) to the 2019 MSDD. As a result, the calculated take estimate decreased, from 69 takes by Level B harassment at the Bremerton ferry terminal



in the initial IHA to 64 takes by Level B harassment proposed for take by Level B harassment here. This represents a seven percent decrease. Since the number of harbor porpoises estimated to be taken by Level B harassment here are fewer than that authorized in the initial IHA, this change has no effect on our findings.

The initial IHA authorized a total of 2,286 Level B takes of harbor seals, with an estimated 145 harbor seals taken at the Bremerton ferry terminal and 2,141 harbor seals taken at the Edmonds ferry terminal. Using the updated 2019 MSDD, the calculated takes of harbor seals at the Bremerton terminal increased to 465. While this increase is notable, the total estimated take is well below that authorized for both the Bremerton and Edmonds ferry terminals in the initial IHA. Additionally, the monitoring report from pile driving completed at the Edmonds terminal reports only 37 harbor seals taken by Level B harassment, indicating that the actual number of animals that occur are far below the number of takes authorized.

**Table 4. Total Takes Proposed for Renewal.**

<b>Species</b>	<b>Level B</b>	<b>Level A</b>	<b>Total</b>
Harbor seal	465	0	465 <sup>a</sup>
Northern elephant seal	9	0	9
California sea lion	621	0	621
Steller sea lion	6	0	6
Southern Resident killer whale	0	0	0
Transient killer whale	12	0	12
Gray whale	5	0	5
Humpback whale	5	0	5
Minke whale	5	0	5
Harbor porpoise	64	0	64 <sup>b</sup>
Dall's porpoise	15	0	15
Common dolphin	7	0	7

<sup>a</sup> Take estimate increased from initial IHA due to increased density

<sup>b</sup> Take estimate decreased from initial IHA due to decreased density

## **Description of Proposed Mitigation, Monitoring and Reporting Measures**

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the Notice announcing the issuance of the initial IHA (83 FR 45897; September 11, 2018), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this renewal:

Pre-activity monitoring will take place from 30 minutes prior to initiation of pile driving activity and post-activity monitoring will continue through 30 minutes post-completion of pile driving activity. Pile driving may commence at the end of the 30-minute pre-activity monitoring period, provided observers have determined that the shutdown zone (described below) is clear of marine mammals, which includes delaying start of pile driving activities if a marine mammal is sighted in the zone, as described below. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.*, the entire shutdown zone and surrounding waters must be visible to the naked eye).

If a marine mammal approaches or enters the shutdown zone during activities or pre-activity monitoring, all pile driving activities at that location shall be halted or delayed, respectively. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone and 15 or 30 minutes (for pinnipeds/small cetaceans or large cetaceans, respectively) have passed without re-detection of the animal. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

To prevent Level A harassment of marine mammals, WSDOT must establish shutdown zones equivalent to the Level A harassment zones. If the Level A harassment zone is less than 10 m, a minimum 10 m shutdown zone must be enforced. The required shutdown zones are presented in Table 5.

**Table 5. Shutdown Distances for Pile Driving Activities.**

Pile type, size & pile driving method	Shutdown distance (m)				
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid
36-inch indicator pile installation	10	10	25	10	10
36-inch indicator pile removal	10	10	10	10	10
36-inch steel dolphin pile removal	25	10	35	10	10
36-inch steel dolphin pile installation	25	10	35	10	10
30-inch steel dolphin pile installation	25	10	25	10	10

In addition to the Level A shutdown measures described above, WSDOT must implement shutdown measures if Southern Resident killer whales are sighted within the vicinity of the project and are approaching the Level B harassment zone during pile driving activities. If a killer whale approaches the Level B harassment zone and it is unknown if the animal is a Southern Resident or a transient killer whale, it must be assumed to be a Southern Resident killer whale and WSDOT must implement the shutdown measures described above. If a Southern Resident killer whale enters the Level B harassment zone undetected, pile driving must cease upon observation of the animal and must be suspended until the animal exits the Level B harassment zone.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the Level B harassment zones, pile driving and removal activities must cease

immediately using delay and shutdown procedures. Similarly, if an animal is observed approaching or within the Level A harassment zones, pile driving and removal activities must cease immediately. Activities must not resume until the animal has been confirmed to have left the area or 15 or 30 minutes (pinniped/small cetacean or large cetacean, respectively) has elapsed.

For all pile driving activities, a minimum of three Protected Species Observers (PSOs) will be required, two land-based and one vessel-based. One PSO must be stationed at the active pile driving rig or at the best vantage point practicable to monitor the shutdown zones for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator.

Monitoring of pile driving must be conducted by qualified PSOs (see below) who have no other assigned tasks during monitoring periods. WSDOT will adhere to the following conditions when selecting observers:

- Independent PSOs must be used (*i.e.*, not construction personnel);
- A lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
- WSDOT must submit PSO CVs for approval by NMFS.

WSDOT must ensure that observers have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;

- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

PSOs must collect the following information during marine mammal monitoring:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed;
- Weather parameters and water conditions during each monitoring period (*e.g.*, wind speed, percent cover, visibility, sea state);
- The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;
- Age and sex class, if possible, of all marine mammals observed;
- PSO locations during marine mammal monitoring;
- Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);

- Description of any marine mammal behavior patterns during observation, including direction of travel;
- Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);
- Detailed information about any implementation of any mitigation triggered (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any; and
- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals.

WSDOT must submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the IHA, whichever comes earlier. This report must include the information described above. A final report must be prepared and submitted to NMFS within 30 days following resolution of comments from NMFS on the draft report. If NMFS has no comments on the draft report, the draft will be considered the final report.

In addition, NMFS would require WSDOT to notify NMFS' Office of Protected Resources and NMFS' West Coast Region Stranding Coordinator within 48 hours of sighting an injured or dead marine mammal in the construction site. WSDOT must provide NMFS and the Stranding Network with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is

dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). In the event that WSDOT finds an injured or dead marine mammal that is not in the construction area, WSDOT must report the same information as listed above to NMFS as soon as operationally feasible.

### **Public Comments**

As noted previously, NMFS published a notice of a proposed IHA (83 FR 16330; April 16, 2018) and solicited public comments on both our proposal to issue the initial IHA for pile driving at the Bremerton and Edmonds ferry terminals and on the potential for a Renewal, should certain requirements be met. All public comments were addressed in the notice announcing the issuance of the initial IHA (83 FR 45897; September 11, 2018). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the Renewal of the 2018 IHA.

*Comment:* The Marine Mammal Commission (Commission) requested clarification of certain issues associated with NMFS's notice that one-year Renewals can be issued in certain limited circumstances and expressed concern that the process would bypass the public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of Renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

*Response:* The notice of the proposed initial IHA expressly notified and invited comment from the public on the possibility that under certain, limited conditions the applicant could seek a Renewal IHA for an additional year. The notice described the conditions under which such a Renewal request could be considered and expressly sought public comment in the event such a Renewal were sought for this action. Further, since issuance of the initial IHA, NMFS has modified the Renewal process to provide notice through the **Federal Register** and an additional 15-day public comment period at the time the Renewal IHA is requested. NMFS also will provide direct notice of the requested Renewal to those who commented on the initial IHA, to provide an opportunity to submit any additional comments.

We appreciate the Commission's suggestion that NMFS discuss the potential for IHA Renewals through a more general route, such as a rulemaking. However, utilizing the public comment process associated with IHAs is more efficient for the agency, while still providing for appropriate public input into NMFS' decision-making. Further, NMFS' recent modification to the Renewal process (i.e., soliciting additional public comment at the time of a Renewal request) should alleviate the Commission's concern about the lack of additional public comment and need for a more general rulemaking.

For more information, NMFS has published a description of the Renewal process on our website (available at [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals)).

### **Preliminary Determinations**

WSDOT's proposed activity is identical to the activity analyzed in our previously issued Notices of proposed IHA and issued IHA (with the exception of the number of



piles proposed for installation and removal, which is less than the number analyzed in those documents). We concluded that the initial IHA would have a negligible impact on all marine mammal stocks and species and that the taking would be small relative to population sizes. The marine mammal information, potential effects, and the mitigation and monitoring measures remain the same as those analyzed in the previously issued Notices of proposed IHA and issued IHA, therefore the extensive analysis, as well as the associated findings, included in the prior documents remain applicable.

The only differences between the initial IHA and this requested Renewal is that the number of piles proposed for installation and removal, and the numbers of marine mammal takes expected to occur incidental to the proposed activities (including consideration of changes in marine mammal density for several stocks), are lower than the numbers analyzed and authorized in the previously issued IHA. As both the number of piles and the number of takes expected to occur, and requested, for this Renewal, are lower than in the initial IHA, we have concluded that the effects of the requested Renewal would be the same or less than those that were analyzed in the Notices of the initial proposed IHA and issued IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of California sea lions decreasing and the estimated abundances of gray whales and humpback whales increasing, as well as the ongoing gray whale Unusual Mortality Event, none of which are expected to change our assessment of the effects of the takes from this activity. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the

following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) WSDOT activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

### **Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division, whenever we propose to authorize take for endangered or threatened species. The effects of this proposed federal action were adequately analyzed in NMFS' Biological Opinion for the Bremerton and Edmonds Ferry Terminals Dolphin Replacement Project, dated March 22, 2018, which concluded that the take NMFS proposes to authorize through this IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.

### **Requested Renewal and Request for Public Comment**

As a result of these preliminary determinations, NMFS proposes to issue an IHA Renewal to WSDOT for conducting pile driving at the Bremerton ferry terminal during the August 1, 2019 through February 15, 2020 in-water work window, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

A draft of the proposed IHA can be found at

*<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>*. We request comment on our analyses, the proposed Renewal, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: July 5, 2019.

**Donna S. Wieting,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

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